86-297

Supreme Court,
FILE
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JOSEPH F. SPANI
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

NO.

RICHARD RUSSELL PETITIONER - APPELLANT

vs.

STATE OF TEXAS - RESPONDENT - APPELLEE

CASE NO. 83-CR-0827

PETITION FOR A WRIT OF CERTIORARI

TO THE TEXAS COURT OF CRIMINAL APPEALS

RICHARD RUSSELL
PRO-SE
16106 N.W. MILITARY HWY.
SAN ANTONIO, TEXAS 78231

A.

QUESTIONS PRESENTED FOR REVIEW

1.

Whether the Lower Federal Courts and State of Texas Court of Criminal Appeals rendered a decision in conflict with, Texas State Law and Federal Law, when they refused to rule if the State District Judge ordered this injunction dismissed?

2.

Whether the Texas Court of Criminal Appeals ruled correctly, in holding: No appeal may be taken in this case?

3.

Whether the State District Judge had proper jurdication, to hear evidence, and punish, in The 175th Court?

4.

Whether The State Trial Court erred, in violation of due process and due course of law provisions of The United States and Texas Constitution, in not making written findings in support of its order revoking probation?

5.

Whether the State Trial Court erred in not halting the revocation proceedings Sue Sponte and conducting a competency examination when evidence of Appellant's incompetency was introduced?

6.

Whether The State Trial Court erred in overruling Appellant's motion to quash because the State's motion to enter adjudication of guilt and revoke probation was **NOT** sworn to by prosecutor?

B.

PARTIES

STATE OF TEXAS

C.

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E.

DECISIONS BELOW

The decisions of The Texas Court of Criminal Appeals is reported a

Appendix A.

F.

JURISDICTION

An order denying a petition for rehearing in The Texas Court of Criminal Appeals was entered on, January 15, 1986.

A copy of the orders are attached as Appendix A.

Jurisdiction is conferred by 28 U.S.C. 1254(1)

G.

CONSTITUTIONAL PROVISIONS

United States Constitution

First Amendment .....

Fourteenth Amendment .....

Eighth Amendment .....

Statues and Rules

28 U.S.C. 1254(1)

H.

STATEMENT OF THE CASE

Petitioner recite only so much of the two year history of the litigation as is necessary for a determination of the issue presently before the Court. Beginning in 1983, Petitioner was charged by Bill of Indictment with the felony offense of aggravated promotion of prostitution. On May 18, 1983, Petitioner pleaded *nolo contendere* because his

retained counsel (John M. Pickney III) did not show up at the signing of the injunction. This *nolo contendere* plea was involuntary and coerced by Attorney Royal Griffin. On June 16, 1983, the trial Court (175th Judicial District Court) placed Petitioner on probation, without entering an Adjudication of Guilt, for a term of six years, and imposed a Five Thousand ($5,000.00) Dollar fine, conditioned that Petitioner comply with some 16 conditions of probation. On August 16, 1983, the State filed a "motion to enter Adjudication of Guilt and revoke probation," alleging violation of Condition 16 in three paragraphs (See Appendix). Petitioner pleaded not true to each allegation, but after a mockery of a hearing, the Court found said allegations true without any evidence of one single conviction of any of his "former" employees for prostitution.

The 175th District Court of Bexar County, Texas entered an Adjudication of Guilt, and sentenced Appellant to six years imprisonment in the Texas Department of Corrections. May it be noted that probation was revoked for violations of three paragraphs, of Condition 16, nothing more, without an arrest, without a written statement pertaining to July 17, 1983, the only date the State relies on for said violation, nothing prior to July 17, 1983, is being alleged in "motion to enter Adjudication of Guilt and revoke probation." Refer to Appendix. Again, work sheets show there was no customers on July 17, 1983.

Being Appendix, this could be a reason for no written report, in direct violation of State and Federal law. Timely Notice of Appeal was given in open Court. The Fourth Circuit Court of Appeal in San Antonio, in Cause No. 04-83-00499 affirmed the Petitioner's appeal on the 30th day of January, 1985.

Appeal was denied in The Court of Criminal Appeals, Austin, Texas, January 15, 1986, on a motion for rehearing.

I.

ARGUMENTS IN SUPPORT OF GRANTING CERTIORARI

1.

THE TEXAS COURT OF CRIMINAL APPEALS RULED INCORRECTLY IN HOLDING: NO APPEAL MAY BE TAKEN IN THIS CASE.

On October 16, 1985 the Texas Court of Criminal Appeals at Austin, Texas issued an opinion that forbid the Appellant from taking an appeal. "It is well stated no appeal may be taken from the hearing in which the Trial Court determined to proceed with an adjudication of guilt on original charges." *Daniel vs. State,* 615 S.W., 2d 771. Appellant has not been provided a remedy at law or any considerable appeal by said Court, in direct opposite of First and Fourteenth Amendment of the United States Constitution.

2.

THE STATE DISTRICT JUDGE DID NOT HAVE JURISDICTION, TO HEAR EVIDENCE, AND PUNISH, IN THE 175TH COURT.

This injunction was held in the 166th Court and transferred to the 175th without a **TRANSFER** order, Article 4661 holds...

Under Article 1911, and Article 4661, "punishment must be inflicted by Court in which injunction proceedings are pending, and where suit in which injunction was granted was transferred to another court, it had no jurisdiction to punish as for Contempt violations of injunction committed prior to the transfer." See *Ex Parte Gonzales,* 235 S.W. 635, (1922).

3.

THE STATE TRIAL COURT ERRED IN VIOLATION OF THE DUE PROCESS AND DUE COURSE OF LAW PROVISIONS OF THE UNITED STATES AND TEXAS CONSTITUTION, IN NOT MAKING WRITTEN FINDINGS IN SUPPORT OF ITS ORDER REVOKING PROBATION.

Refer to *Gagnon v. Scarpelli,* 411 U.S. 778, 786 (1973);

United States v. Martinez, 650 F.2d 744, 745 (5th Cir. 1981); *United States v. Lacey,* 648 F.2d 441, 445 (5th Cir. 1981); *Ruedas v. State,* 586 S.W. 2d 520, 523 (Tex. Crim. App. 1979)

4.

THE STATE TRIAL COURT ERRED IN NOT HALTING THE REVOCATION PROCEEDINGS SUE SPONSE AND CONDUCTING A COMPETENCY EXAMINATION WHEN EVIDENCE OF APPELLANT'S INCOMPETENCY WAS INTRODUCED.

Refer to *Carpenter v. State,* 507 S.W. 2d 794, 795 (Tex. Crim. App. 1974)

Williams v. State, S.W. 2d No. 098-83 (Tex. Crim. App. Jan. 18, 1984)

5.

THE STATE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO QUASH BECAUSE THE STATE'S MOTION TO ENTER ADJUDICATION OF GUILT AND REVOKE PROBATION WAS NOT SWORN TO BY PROSECUTOR.

Refer to *Pollard v. State,* 353 S.W. 2d 449 - 449-50 (Tex. Crim. App. 1962).

J.

CONCLUSION

Certiorari should be granted because Texas Court of Criminal Appeals, and State District Court, has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such

a departure by Lower Court, as to call for an exercise of this Courts' power of supervision.

Respectfully Submitted

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K.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing petition has been forwarded to the Attorney General Jim Mattox.

Done this the 13th day of June, 1986

Richard Russell

Richard Russell